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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RALPH INTERNATIONAL THOMAS, No. C 93-0616 MHP
Petitioner,

v.
ROBERT K. WONG, Acting Warden of
California State Prison at San Quentin,
Respondent.

ORDER RE PETITIONER'S MOTION FOR
PARTIAL JUDGMENT ON THE
PLEADINGS REGARDING PROCEDURAL
DEFAULT DEFENSE

On October 7, 2008, petitioner filed a Motion For Partial Judgment On The Pleadings Regarding Procedural Default Defense, alleging that he was entitled to judgment as a matter of law with regard to the respondent's procedural default defense relating to claims 3, 4, 9 and 11. On January 22, 2009, respondent filed a Notice Of Withdrawal Of Procedural Default Defense, conceding that at the time that petitioner filed his state exhaustion petition, California's timeliness rule was not independent of federal law and withdrawing his allegations of default in relation to claims 3, 4, 9 and 11.

In light of respondent's withdrawal of his procedural default defense, the court denies petitioner's motion as moot.

IT IS SO ORDERED.

DATED: April 7, 2009


Marilyn Hall Patel
United States District Judge